

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF
THE IMPLEMENTATION
OF ELECTRONIC FILING
PROCEDURES

GENERAL PROCEDURE ORDER NUMBER 2001-8

WHEREAS the Federal Rules of Procedure (Civil Rule 5(e), Bankruptcy Rules 5005(a)(2), 7005, 8008, 9011 and 9029) provide that a court may establish practices and procedures for the filing, signing and verification of documents by electronic means; and

WHEREAS, recommendations regarding administrative policies and procedures for filing, signing and verifying documents by electronic means have been tendered to the court by various focus groups consisting of judges, attorneys, practitioners, court personnel, and experts in related subject matter areas; and

WHEREAS, proposed Administrative Procedures for Electronic Case Files (ECF Procedures) based upon those focus group recommendations have been reviewed by the court; and

WHEREAS, the ECF Procedures are consistent with and further the responsibility of the clerk for the control of the court's docket pursuant to Fed.R.Bankr.P 5003 and 5005, including safeguarding the integrity of the court's docket, pursuant to the provisions of the Case Management/Electronic Case Files (CM/ECF) system of the United States Courts; and

WHEREAS, the ECF Procedures provide a means for the signature on documents through a

secure mechanism for the creation and issuance of individual passwords; and

WHEREAS, the ECF Procedures provide adequate means for the filing, review and retrieval of documents by parties who are not able to access CM/ECF from a remote location; it is therefore

ORDERED that:

1. In addition to filing petitions, pleadings and other papers conventionally in paper format as prescribed in Local Bankruptcy Rule 904 and other rules, attorneys and other Electronic Filers authorized by the Court shall have the option to file documents in an electronic format. When the electronic filing option is elected consistent with this order and the Administrative Procedures attached hereto, the electronic files, consisting of the images of documents filed in cases or proceedings and documents filed by electronic means, shall constitute the official record of the court together with any other records kept by the clerk.
2. The ECF Procedures attached hereto as Exhibit A (Administrative Procedures for Electronic Case Files) are approved.
3. The use of an attorney's password to file a document electronically shall constitute the signature of that attorney for purposes of Fed.R.Bankr.P. 9011.
4. Each attorney, law firm or other person that obtains a password for electronic filing shall be responsible for its security and use. No attorney, law firm or other person shall knowingly permit or cause to permit an Electronic Filer's password to be utilized by anyone other than an authorized member, employee or agent of the Electronic Filer's law firm.
5. The request for and receipt of a CM/ECF password from the court shall constitute a request for electronic service pursuant to Fed.R.Bankr.P. 9036 of all notices, orders, decrees and judgments issued by the court, and except as otherwise provided in the ECF Procedures, a waiver of the right to receive notice and service from the court conventionally.
6. The electronic filing of a document in accordance with the ECF Procedures shall constitute entry of that document on the docket kept by the clerk pursuant to Fed.R.Bankr.P. 5003.
7. All orders, decrees, judgments and proceedings of the court shall, in accordance with the ECF Procedures, be entered on the docket kept pursuant to Fed.R.Bankr.P. 5003 and for the purposes of Fed.R.Bankr.P. 9021.
8. To the extent that this order or the ECF Procedures is inconsistent with the Local Bankruptcy Rules and Forms for the District of Colorado dated December 1, 1999, this order and the ECF Procedures shall have precedence.
9. This order or the ECF Procedures may be amended or superseded by amendments to the Local Bankruptcy Rules and Forms for the District of Colorado as the court deems necessary.

10. This order shall become effective on January 7, 2002, and shall apply to all cases and proceedings pending on or filed after that date.

Dated: _____, 2001.

BY THE COURT:

Marcia S. Krieger, Chief Judge

Sidney B. Brooks, Judge

Donald E. Cordova, Judge

A. Bruce Campbell, Judge

Elizabeth E. Brown, Judge

ADMINISTRATIVE PROCEDURES FOR
ELECTRONIC CASE FILES

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO

January 7, 2002
Attachment to General Procedure Order No. 2001-8

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ADMINISTRATIVE PROCEDURES

I. Eligibility and Registration for the Electronic Filing System

A. Eligibility. Attorneys admitted to practice in the District of Colorado, and others as the court deems appropriate, may register as Electronic Filers in the court's ECF system.

B. Password. Each Electronic Filer shall be entitled to one CM/ECF password for electronic retrieval, filing and noticing of documents in accordance with CM/ECF. Registration for a password is governed by paragraph I.C.

C. Registration.

1. A registration form in substantial conformity to L.B.F. ECF-1 attached hereto shall be submitted for each Electronic Filer and shall require the Electronic Filer's name, address, telephone number, Internet e-mail address, and a declaration that the Electronic Filer, if an attorney, is admitted to practice in the District of Colorado.

2. All registration forms shall be mailed or delivered to the Clerk, U. S. Bankruptcy Court, District of Colorado, 721 19th Street, Denver, Colorado, 80202-2508, Attention: ECF System Registration.

3. Each Electronic Filer registering for CM/ECF shall enroll in and complete a CM/ECF Electronic Filer Training Program conducted by the clerk. Electronic Filers may enroll one or more assistants or staff persons in the CM/ECF Electronic Filer Training Program as well. Selection and scheduling of applicants for CM/ECF training shall be determined by the clerk. The clerk will use his discretion in a fair and nondiscriminatory manner to ensure that all registrants are treated fairly. Attorneys from large firms shall not be favored over attorneys from small firms or solo practitioners. Experienced and sophisticated computer-literate applicants shall not be favored over those with less experience and sophistication.

4. The password required to submit documents to the ECF system serves as the Electronic Filer's original signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Bankr.P. 9011, other Federal Rules of Bankruptcy Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

5. Electronic Filers agree to protect the security of their passwords and

immediately notify the clerk if they learn that their password has been compromised. Electronic Filers may also find it desirable to change their assigned passwords periodically and may do so by contacting the Systems Department of the Clerk's Office.

6. Notwithstanding the foregoing, attorneys and others who do not obtain passwords as Electronic Filers on CM/ECF are not required to electronically file pleadings and other papers. Once registered, an Electronic Filer may withdraw from filing electronically on CM/ECF by providing written notice of the withdrawal to the clerk.

7. The individual named in the CM/ECF registration Form L.B.F. ECF-1 remains the official recipient of the Electronic Filer's password. No Electronic Filer or other person may knowingly permit or cause to permit an Electronic Filer's password to be used by anyone other than an authorized agent of the Electronic Filer. All documents submitted via an Electronic Filer's password shall be considered "signed" by the Electronic Filer to whom the password is issued.

D. Revocation of Password and Authority to File Electronically. The Court reserves the right to revoke an Electronic Filer's password and, therefore, his or her authority and ability to electronically file documents for failure to comply with any provisions of the agreement contained in the Electronic Filer Registration Form, failure to adequately protect his or her password, failure to comply with the provisions of these Administrative Procedures for Electronic Case Files, failure to pay fees required for documents electronically filed, or other misuse of the electronic case filing system.

II. Electronic Filing and Service of Documents

A. Filing.

1. Electronic Filing. Except as expressly provided in paragraph III below, all petitions, statements of affairs, schedules, motions, pleadings, memoranda of law, certificates of contested and non-contested matters, or other documents required to be filed with the court in connection with a case shall be electronically filed in accordance with these ECF procedures.

2. Waiver of Paper Format. Pursuant to Fed.R.Bankr.P. 5005(a)(2), a document filed by electronic means in accordance with General Procedure Order No. 2001-8 and these Administrative Procedures for Electronic Case Files constitutes a written paper for the purpose of applying the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure made applicable by the Federal Rules of Bankruptcy Procedure, and § 107 of Title 11, United States Code, except as otherwise provided by these procedures. Electronic Filers who file documents electronically pursuant to these ECF procedures shall be excused from the provisions of L.B.F. 904(a) requiring that said documents be in paper form.

3. Proposed Orders on Motions. All motions electronically filed shall be

accompanied by a proposed order as an attachment in PDF format. In addition, at the time a proposed order relative to such motion becomes ripe for entry by the court, or upon request of the court in any other matter at any time, the movant or respondent shall tender a copy of the proposed order in word processing document format to the judge via e-mail at the following addresses:

Chief Judge Marcia S. Krieger	courtroomD@cob.uscourts.gov
Judge Sidney B. Brooks	courtroomE@cob.uscourts.gov
Judge Donald E. Cordova	courtroomB@cob.uscourts.gov
Judge A. Bruce Campbell	courtroomC@cob.uscourts.gov
Judge Elizabeth E. Brown	courtroomF@cob.uscourts.gov

4. Application to L.B.R. 202 Matters. In addition to or pursuant to the provisions contained in this section, the following shall apply to L.B.R. 202 matters:

a. Motions, responses or objections thereto, notices, requests for hearings, certificates of service, and certificates of contested/non-contested matter may be filed electronically pursuant to these ECF procedures.

b. Certificates of contested/non-contested matter shall not include as exhibits attached thereto copies of the motion and all documents attached thereto, notice, certificate of service of the motion and notice, written objections and requests for hearings, but shall contain a reference to such documents by title and the document number assigned to each document as it appears on the electronic docket sheet.

c. Certificates of non-contested matter need not be served upon opposing or other interested parties except in those instances where the proposed order tendered with the certificate differs from the proposed order attached to and filed with the original motion.

d. All motions electronically filed shall be accompanied by a proposed order as an attachment in PDF format. In addition, concurrent with the filing of a certificate of contested or non-contested matter, the movant or respondent shall tender a copy of the proposed order in word processing document format to the judge via e-mail at the addresses appearing in paragraph 3 above.

5. Copies. Except as otherwise provided by these procedures, Electronic Filers filing petitions, schedules, statements, lists, and amendments thereto pursuant to these ECF procedures shall be excused from providing copies to the clerk required pursuant to L.B.F. 102(d) & (e), and when filing motions, applications, notices, objections, requests for hearing, and other documents pursuant to these ECF procedures shall be excused from providing copies to the clerk as otherwise required by L.B.R. 511 and L.B.R. 904(d).

6. Attachments to Pleadings. All documents that form part of a pleading and which are being filed at the same time and by the same party shall be electronically filed together

under one docket number, e.g., the motion and supporting affidavit.

7. Exhibits. Electronic Filers filing documents that reference exhibits not prepared in electronically produced text shall scan and electronically file only excerpts of the exhibits that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such, and the complete exhibit must be made available forthwith to counsel and the court on request (and must be available in the courtroom at any hearing pertaining to the matter). An Electronic Filer filing excerpts of the exhibits pursuant to these provisions does so without prejudice to their right to file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are germane.

8. Proofs of Claim. The clerk shall scan all proofs of claims tendered in hard copy (paper) format into CM/ECF. The clerk may scan all or a brief portion of any exhibits attached to the proof of claim. Exhibits in excess of ten pages in length may be scanned in their entirety at the court's discretion. Partially scanned exhibits to claims shall be identified as partially scanned on the CM/ECF electronic record.

9. Title of Docket Entries. Electronic Filers shall be responsible for designating a title for the electronically filed document using one of the options provided in the system, e.g., motion, application, etc.

10. Fees Payable to the Clerk. Participation in the ECF system requires Electronic Filers to complete and file a Credit Card Authorization form with the clerk. The numbers for one or more active credit card accounts together with information regarding authorized card signors and expiration date shall be indicated on this form. The Credit Card Authorization authorizes the clerk to debit from the account any fee required for filing. When a document requiring a fee is electronically filed, notice of the transaction will be generated in a report to the Intake Section of the clerk's office. An intake deputy clerk will process the charge to the Electronic Filer's credit card account no later than the first business day following the submission of the electronically filed document. Electronic notice of the completed payment transaction shall be provided to the Electronic Filer. In the event the credit card charge cannot be processed, the Electronic Filer will be contacted and must satisfy the required payment within 24 hours. In the event an Electronic Filer's credit card transaction is rejected three times, the Electronic Filer may lose all access to the ECF system until such time as the payment deficiency is satisfied and the faulty or expired credit card is replaced. This paragraph shall not apply to federal agencies and chapter 7 trustees for whom different filing fee payment arrangements may apply.

B. Consequences of Electronic Filing.

1. Electronic transmission of a document to the ECF system consistent with these rules, together with the transmission of a Notice of Electronic Filing (paragraph II.C.2.

below) from the court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Bankr.P. 5003.

2. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

3. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight M.S.T. or MDT, as applicable, in order to be considered timely filed that day. Notwithstanding the foregoing, an Electronic Filer whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

C. Service.

1. General Rule. Except as otherwise provided in paragraph II.C.3., all documents required to be served shall be served in paper (i.e., “hard copy”) form in the manner mandated by the applicable law and rules.

2. Automatic Notice of Electronic Filing. The CM/ECF system automatically generates a Notice of Electronic Filing at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and Electronic Filer filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all Electronic Filers participating in the case.

3. Specific Consent to Electronic Service/Notice Required in Each Case. Registration as an Electronic Filer serves as consent to receive notice electronically from the court, including notice of the entry of an order or judgment under Fed.R.Bankr.P. 9022, but does not constitute waiver of the right to personal service or service by first class mail, nor does it serve as consent to electronic service or notice from other parties in the case, except in those cases where the Electronic Filer electronically files a specific waiver of the right to personal service or first class mail and consent to electronic service/notice pursuant to Fed.R.Bankr.P. 9036. Whenever service is required to be made on a person who has filed a specific waiver of the right to personal service or first class mail and consent to electronic service/notice in a particular case, electronic transmission of the “Notice of Electronic Filing” shall constitute service or notice of the filed document. Service may also be made by serving the “Notice of Electronic Filing” generated by CM/ECF by hand, facsimile or e-mail, or by overnight mail if service by electronic transmission is impracticable.

4. Conventional Service. Notwithstanding the preceding paragraph, conventional service of documents in hard copy shall be required in the following instances:

(a) Service made in accordance with Fed.R.Civ.P. 4 or 45, or Fed.R.Bankr.P. 7004 or 9014, including service of the summons and complaint.

(b) Except for those agencies who file a consent to service by electronic means pursuant to Fed.R.Civ.P. 5(b) in a specific case, service upon an agency of the United States, including the United States Attorney, the United States Trustee, or the court.

(c) Service of notice pursuant to Fed.R.Bankr.P. 2002(a)(1).

(d) Upon the commencement of the case, the attorney for the debtor, or the debtor pro se, shall forthwith transmit a copy of the petition, schedules and statement of financial affairs, and in a chapter 11 case a copy of the list of 20 largest creditors or equity holders to the United States trustee, and to any trustee appointed in the case. If the attorney or debtor pro se does not know the identity of the trustee, then two copies of the petition, schedules, and statement of affairs shall be transmitted to the U. S. Trustee who shall, in turn, transmit one copy on the trustee upon the trustee's appointment.

5. Orders. All signed orders, decrees, judgments, and proceedings of the court shall be electronically filed by the court or court personnel in accordance with these ECF procedures, which shall constitute entry on the docket kept by the clerk under Fed.R.Bankr.P. 5003 and 9021. Any order filed electronically bearing a facsimile signature in lieu of the original signature of a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner. Immediately upon the electronic entry of an order or judgment, a Notice of Electronic Filing shall be transmitted to all Electronic Filers who have entered appearances in the case. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Bankr.P. 9022. The clerk shall provide notice in paper form to any person who is entitled to receive notice, but has not given consent to receive notice by electronic means.

6. Service of Judgment and Order. Notwithstanding the foregoing paragraph, a paper copy of the judgment or final order shall be served by mail or other conventional means by the clerk or other party as the court may direct.

7. Service of Certificates of Non-Contested Matters. Certificates of non-contested matter need not be served upon opposing or other interested parties except in those instances where the proposed order tendered with the certificate differs from the proposed order attached to and filed with the original motion.

D. Signatures.

1. Every petition, pleading, motion and other paper served or filed in accordance with these procedures shall be subscribed by the attorney signing such pleading or document with a facsimile imaged signature or an “electronic signature,” e.g., “s/Jane Doe”. In addition, electronically filed documents must include a signature block that sets forth the name, address, telephone number, e-mail address and the attorney’s Colorado bar registration number, if applicable.

2. Petitions, lists, schedules, statements, amendments, pleadings, affidavits, stipulations, proofs of claims and other documents which contain original signatures, documents requiring verification under Fed.R.Bankr.P. 1008, or documents in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury, and unsworn declarations under 28 USC §1746, shall be filed electronically and bear “electronic signatures.”

3. Petitions, lists, schedules, statements, and amendments requiring the signature of the debtor(s) that are filed electronically require an originally executed *DECLARATION RE: ELECTRONIC FILING* in substantial conformity to L.B.F. ECF-2 attached hereto. The *DECLARATION RE: ELECTRONIC FILING* shall describe the particular document to which the declaration applies and shall include a statement that the signatory has read the document. The *DECLARATION RE: ELECTRONIC FILING* shall be filed in with the clerk within five (5) business days of the electronic filing of the document. Failure to file the *DECLARATION RE: ELECTRONIC FILING* within the time prescribed by this paragraph may result in the document being stricken or other appropriate sanction.

4. Documents that are electronically filed and require original signatures other than that of the Electronic Filer must be maintained in paper form by the Electronic Filer for two years following expiration of all time periods for appeals after entry of a final order terminating the case or proceeding.

5. Documents requiring signatures of more than one party may be electronically filed provided that the document: (1) containing all necessary signatures is scanned; (2) contains the signature of an Electronic Filer and representation by such Electronic Filer that all other signatures have been obtained on the original document; and (3) in any other manner approved by the court in advance of filing.

III. Disclosure of Contents of Filed Documents.

A. Full Disclosure. Except as provided in paragraph B below, full public disclosure of all electronic case records shall be made available by electronic access or by personal inspection of files at the office of the clerk.

B. Protective Order. Upon motion and for cause shown, the court may, in accordance with its authority under 11 USC §§105 and 107(b)(2), and Fed.R.Bankr.P 1007(j) and 9018, enter such orders as may be appropriate to protect the interests of the debtor or other entities by

restricting disclosure of information contained in the records of the court. Protective orders pursuant to this paragraph may be entered *ex parte*, and any party can move for reconsideration of a protective order.

IV. Access to the Docket

A. Internet Access. Any person or organization may obtain access to the “read only” area of CM/ECF at the court’s Internet site at www.cob.uscourts.gov by obtaining a PACER password and paying any fees established for such access. Those who have PACER access but who are not Electronic Filers may retrieve docket sheets and documents, but they may not file documents. Information posted on the CM/ECF system shall not be downloaded for uses inconsistent with the privacy concerns of any person.

B. Access at the Court. Access to all documents filed is available, without obtaining a password, in the clerk’s office during regular business hours, Monday through Friday. Conventional and certified copies of electronically filed documents may be purchased at the clerk’s office during regular business hours Monday through Friday. The fee for copying and certifying shall be in accordance with the Schedule of Miscellaneous Fees promulgated by the Judicial Conference of the United States pursuant to 28 USC §1930(b).

D. Access Charges. Electronic access fees shall be payable in accordance with the fees and procedures established by the Judicial Conference of the United States pursuant to 28 USC §1930(b).